

**MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
RESOLUTION 2014-12**

**RIGHT TO FARM CONFLICT RESOLUTION
FINDINGS AND RECOMMENDATIONS**

**DAVID AND DIANE FISH
FISH FARM
BLOCK 3201, LOT 22
BOROUGH OF FLORHAM PARK, MORRIS COUNTY, NEW JERSEY**

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1(a) and the State Agriculture Development Committee's Right to Farm Rules, N.J.A.C. 2:76-2.7(a), any person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable county agriculture development board or the State Agriculture Development Committee ("SADC") in counties where no county board exists, prior to filing an action in court; and,

WHEREAS, on April 10, 2014, the Morris County Agriculture Development Board ("Morris CADB") received a complaint filed by Lieutenant Mathew Gatzke of the Florham Park Police Department against David and Diane Fish of Florham Park (M-1); and

WHEREAS, Mr. and Mrs. Fish are the owners of the Fish Farm located at 206 Brooklake Road in Florham Park, Block 3201, Lot 22, consisting of 56.05 acres; and

WHEREAS, the complaint states that on April 10, 2014, two cows got out of the Fish Farm property into a residential homes area and that a homeowner residing at 142 Summit Road sustained an injury after he was kicked by a cow and was transported to a local hospital. The complaint further states that cows have gotten out of the farm property on several occasions over the last 12 months impacting the residents and drivers in Florham Park; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(e), if the complaint concerns activities that are not addressed by an agricultural management practice recommended by the SADC or a site specific agricultural management practice adopted by the CADB, the CADB shall contact the farm owner to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.A.C. 4:1C-3; and

WHEREAS, on April 14, 2014, the Morris CADB contacted Mr. and Mrs. Fish to provide evidence that the agricultural operation is a commercial farm (B-1). A subsequent request was mailed to Mr. and Mrs. Fish on May 13, 2014 (B-2); and

WHEREAS, on May 29, 2014, the Morris CADB received the Commercial Farm Certification and supporting documentation from Mr. and Mrs. Fish (F-1 through F-6); and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(e)1, the CADB shall determine whether the dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set

forth in N.J.S.A. 4:1C-9; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.7(a)1, the CADB shall determine whether a commercial farm meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9; and

WHEREAS, if the CADB determines that the agricultural operation is a commercial farm pursuant to N.J.A.C. 4:1C-3, meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, and the dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the CADB shall forward the complaint to the SADC requesting the SADC's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice; and

WHEREAS, if the CADB determines that the dispute does not involve a commercial farm that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9 and/or agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the CADB shall dismiss the complaint; and

WHEREAS, on June 3, 2014, Ms. Katherine Coyle drafted a Staff Report regarding the Fish Farm complaint (B-3); and

WHEREAS, on June 10, 2014, W. Randall Bush, Esq. forwarded the Staff Report to Anthony Colasanti, Esq., attorney for Mr. and Mrs. Fish (B-4); and

WHEREAS, on June 10, 2014, Katherine Coyle forwarded the Staff Report to Lieutenant Gatzke (B-5); and

WHEREAS, during the June 12, 2014 meeting, the Morris CADB reviewed exhibits M-1, F-1 through F-6, and B-1 through B-6; and

INDEX OF EXHIBITS

Exhibits from Florham Park:

April 10, 2014 complaint filed by Lieutenant Mathew Gatzke of the Florham ParkM-1
Police Department

Exhibits from David & Diana Fish:

May 29, 2014 letter from David Fish to the Morris CADB.....F-1

May 29, 2014 Commercial Farm Certification FormF-2

April 24, 2014 letter from Christina Harrigan, Gracie & Harrigan Consulting Foresters, Inc.F-3

2005-2015 Forest Management Plan Addendum prepared by Gracie & Harrigan.....F-4
Consulting Foresters, Inc.

Applications for Farmland Assessment for tax years 2013 and 2014.....F-5

Copies of receipts for years 2011, 2012, 2013 and 2014.....F-6

Exhibits from the Morris CADB:

April 14, 2014 Morris CADB request for Commercial Farm Certification.....B-1

May 13, 2014 Morris CADB request for Commercial Farm Certification.....B-2

June 3, 2014 Staff Report drafted by Katherine Coyle (without exhibits).....B-3

June 10, 2014, W. Randall Bush, Esq. email to Anthony Colasanti, Esq.....B-4

June 10, 2014, K. Coyle email to David FishB-5

Morris County Tax Board – Property Information for Tax Year 2014.....B-6

NOW THEREFORE BE IT RESOLVED, after having considered exhibits M-1, F-1 through F-6, and B-1 through B-6, the Morris CADB makes the following determinations:

Commercial Farm Eligibility:

1. Pursuant to N.J.S.A. 4:1C-3, "commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).
2. Because the Fish Farm consists of more than 5 acres, in order to meet the Right to Farm Act's definition of a "commercial farm," it must produce agricultural or horticultural products worth \$2,500 or more annually, and satisfy the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).
3. According to Exhibits F-1, F-2, F-3, F-4 and F-6, the Fish Farm produced more than \$2,500 worth of agricultural products in 2014, 2013, and 2012.

4. According to Exhibit F-5 and data obtained from the Morris County Tax Board (B-6), Block 3201, Lot 22 is Farmland Assessed.

Agricultural Activity:

1. According to Exhibits F-1 through F-6, the Fish Farm produces beef, forestry products, and Christmas trees.
2. Pursuant to N.J.S.A. 4:1C-9, the owner or operator of a commercial farm may:

"Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System."
3. The dispute involves activities related to the production of livestock (beef). Production of livestock is included on the list of permitted activities set forth in N.J.S.A. 4:1C-9.

Right to Farm Act Eligibility:

In determining whether a commercial farm meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, the CADB and/or the SADC must determine that the farm:

- is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or that the commercial farm was in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.);
- conforms to agricultural management practices adopted by the SADC or has been determined by the CADB to constitute a generally accepted agricultural operation or practice;
- conforms to all relevant federal or State statutes or rules and regulations; and
- does not pose a direct threat to public health and safety.

BE IT FURTHER RESOLVED, based on the foregoing determinations, the Morris CADB finds that the Fish Farm is a "commercial farm" as defined by the Right to Farm Act, N.J.S.A. 4:1C-3.

BE IT FURTHER RESOLVED, that the dispute involves activities related to the production of livestock (beef). Production of livestock is included on the list of permitted activities set forth in N.J.S.A. 4:1C-9.

BE IT FURTHER RESOLVED, that cows getting out of the Fish Farm property pose a direct

threat to the health and safety of the residents and drivers in Florham Park. Accordingly, the Fish Farm does not meet the eligibility criteria pursuant to N.J.S.A. 4:1C-9, and is therefore ineligible for the protections of the Right to Farm Act.

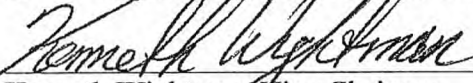
BE IT FURTHER RESOLVED, that the Morris CADB lacks jurisdiction over activities occurring on the Fish Farm and dismisses the complaint. All activities occurring on the Fish Farm are outside the purview of the Morris CADB and remain under the jurisdiction of applicable municipal, state or federal agencies.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.7(g), certified copies of this resolution will be forwarded to the following individuals and agencies:

Lieutenant Mathew Gatzke, Borough of Florham Park Police Department
William Huyler, Administrator, Borough of Florham Park
David and Diane Fish
State Agriculture Development Committee
Morris County Board of Chosen Freeholders

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 2:76-2.7(k), any person aggrieved by the Morris CADB's decision may appeal the decision to the SADC within 10 days from the receipt of the CADB's decision. The SADC shall schedule a hearing and make a determination within 90 days of the receipt of the petition for review.

1. The decision of the SADC shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.
2. Any decision of the Morris CADB that is not appealed shall be binding.


Kenneth Wightman, Vice-Chairman
Morris CADB

6/12/14
Date

| | Yes | No | Abstain | Absent |
|------------------|-----|----|---------|--------|
| Ms. Ashley Myers | ✓ | | | |
| Mr. Davis | ✓ | | | |
| Ms. Davis | ✓ | | | |
| Mr. Desiderio | | | | ✓ |
| Mr. Keller | | | | ✓ |
| Mr. Ort | ✓ | | | |
| Mr. Wightman | ✓ | | | |

I hereby certify the above to be a true copy of a resolution adopted by the Morris County Agriculture Development Board at a meeting held on June 12, 2014.

